

AMENDED IN ASSEMBLY APRIL 21, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2572

Introduced by Assembly Member Bradford

February 19, 2010

An act to amend Sections 5360, ~~5371.1, 5373.1, 5374, 5378, 5378.6, 5379, 5374, 5378, and 5411.5 of~~, and to ~~repeal Section 5376 of~~, the Public Utilities Code, relating to charter-party carriers of passengers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2572, as amended, Bradford. Charter-party carriers of passengers.

The California Constitution establishes the Public Utilities Commission with jurisdiction over all public utilities, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities. Charter-party carriers of passengers, as defined, are subject to the jurisdiction and control of the commission under the Passenger Charter-Party Carriers' Act. The act defines a charter-party carrier of passengers, subject to certain exceptions, to mean every person that is engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway.

This bill would provide that a charter-party carrier of passengers includes any person, corporation, or other entity engaged in the provision of ~~either~~ a hired driver service or a rented motor vehicle that is being operated by a hired driver.

The act requires a charter-party carrier of passengers to obtain from the commission a certificate of public convenience and necessity, or

for certain carriers, to obtain a permit, sets forth the requirements to be met before a certificate or permit may be issued or renewed, ~~establishes fees to be charged by the commission to different classes of certificate holders and for permit holders for issuance of a certificate or permit,~~ and provides that a certificate or permit, or renewal thereof, is effective for 3 years, unless suspended or revoked by the commission.

~~This bill would delete the provision that a certificate or permit, or renewal thereof, is effective for 3 years and would make conforming changes to delete references in the act to the renewal of certificates or permits. The bill would authorize the commission to cancel, revoke, or suspend any operating certificate or permit upon the failure of a certificate or permit holder, or of any of its employees, to follow any order, decision, rule, regulation, direction, demand, ordinance, or other requirements established by the governing body of an airport. The bill would raise the fees charged for issuance of class B certificates, class C certificates, and permits from \$500 to \$700.~~

Existing law authorizes a peace officer, as defined, that arrests a person for operating a charter-party carrier of passengers without a valid certificate or permit to impound and retain possession of the vehicle, subject to certain exceptions and provisions for notice and return of the vehicle. Existing law limits this authority to arrests made at a public airport or within 2 miles of the international border with Mexico.

This bill would delete that limitation.

Existing law requires that an impounded vehicle be immediately returned to the owner, without cost to the owner, if the infraction or violation is not prosecuted or is dismissed, or used in violation of a specified law without the knowledge and consent of the owner.

This bill would delete the requirement that the impounded vehicle be returned without cost to the owner. The bill would require that if a vehicle is seized due to a violation of a person other than the owner, the impounded vehicle be returned to the owner after all impoundment fees are paid.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *It is the intent of the Legislature that the Public*
- 2 *Utilities Commission have access to real-time information on*
- 3 *drivers for licensed charter-party carriers of passengers by*

1 *utilizing the Department of Motor Vehicle's Employer Pull Notice*
2 *Program implementing Section 1808.1 of the Vehicles Code. It is*
3 *the intent of the Legislature that the commission create an online*
4 *renewal process for charter-party carriers of passengers and a*
5 *renewal process that is administratively efficient.*

6 **SECTION 1.**

7 **SEC. 2.** Section 5360 of the Public Utilities Code is amended
8 to read:

9 5360. Subject to the exclusions of Section 5353, "charter-party
10 carrier of passengers" means every person engaged in the
11 transportation of persons by motor vehicle for compensation,
12 whether in common or contract carriage, over any public highway
13 in this state. "Charter-party carrier of passengers" includes any
14 person, corporation, or other entity engaged in the provision of
15 either a hired driver service or a rented motor vehicle when a rented
16 motor vehicle is being operated by a hired driver.

17 ~~SEC. 2.~~ Section 5371.1 of the Public Utilities Code is amended
18 to read:

19 ~~5371.1. (a) No charter-party carrier of passengers issued a~~
20 ~~class A certificate subject to this section shall be restricted as to~~
21 ~~point of origin or destination in the State of California.~~

22 ~~(b) Every application for a certificate or permit shall be~~
23 ~~accompanied by the appropriate fee as specified in Section 5373.1.~~

24 ~~SEC. 3.~~ Section 5373.1 of the Public Utilities Code is amended
25 to read:

26 ~~5373.1. (a) Each application for a charter-party carrier of~~
27 ~~passengers certificate or permit shall be accompanied by a filing~~
28 ~~fee as follows:~~

29 ~~(1) Class A certificates: one thousand five hundred dollars~~
30 ~~(\$1,500).~~

31 ~~(2) Class B certificates: seven hundred dollars (\$700).~~

32 ~~(3) Class C certificates: seven hundred dollars (\$700).~~

33 ~~(4) Permits: seven hundred dollars (\$700).~~

34 ~~(b) The commission shall also require each application to be~~
35 ~~accompanied by a fee to offset the cost of the charter-party carrier~~
36 ~~bus terminal inspections conducted by the Department of the~~
37 ~~California Highway Patrol. The fee shall be fifteen dollars (\$15)~~
38 ~~per tour bus, as defined in Section 612 of the Vehicle Code, or a~~
39 ~~maximum of six thousand five hundred dollars (\$6,500) for each~~
40 ~~operating carrier.~~

~~(e) The commission shall require each charter-party carrier that operates tour buses, as defined in Section 612 of the Vehicle Code, to undergo an annual bus terminal inspection conducted by the Department of the California Highway Patrol and to pay an annual fee of fifteen dollars (\$15) per tour bus, or a maximum of six thousand five hundred dollars (\$6,500), to offset the cost of the inspections.~~

~~(d) The commission shall deposit the fees collected pursuant to subdivisions (b) and (c) in the Motor Vehicle Account in the State Transportation Fund.~~

~~SEC. 4. Section 5374 of the Public Utilities Code is amended to read:~~

~~5374. (a) (1) Before a permit or certificate is issued, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct the proposed transportation services. The commission shall not issue a permit or certificate pursuant to this chapter unless the applicant meets all of the following requirements:~~

~~(A) It is financially and organizationally capable of conducting an operation that complies with the rules and regulations of the Department of the California Highway Patrol governing highway safety.~~

~~(B) It is committed to observing the hours of service regulations of state and, where applicable, federal law, for all persons, whether employees or subcarriers, operating vehicles in transportation for compensation under the certificate.~~

~~(C) It has a preventive maintenance program in effect for its vehicles used in transportation for compensation that conforms to regulations of the Department of the California Highway Patrol in Title 13 of the California Code of Regulations.~~

~~(D) It participates in a program to regularly check the driving records of all persons, whether employees or subcarriers, operating vehicles used in transportation for compensation.~~

~~(E) It has a safety education and training program in effect for all employees or subcarriers operating vehicles used in transportation for compensation.~~

~~(F) It will maintain its vehicles used in transportation for compensation in a safe operating condition and in compliance with the Vehicle Code and with regulations contained in Title 13 of the California Code of Regulations relative to motor vehicle safety.~~

1 ~~(G) It has filed with the commission the certificate of workers'~~
2 ~~compensation insurance coverage or statement required by Section~~
3 ~~5378.1.~~

4 ~~(H) It has provided the commission an address of an office or~~
5 ~~terminal where documents supporting the factual matters specified~~
6 ~~in the showing required by this subdivision may be inspected by~~
7 ~~the commission and the Department of the California Highway~~
8 ~~Patrol.~~

9 ~~(I) It provides for a mandatory controlled substance and alcohol~~
10 ~~testing certification program as adopted by the commission~~
11 ~~pursuant to Section 1032.1.~~

12 ~~(2) With respect to subparagraphs (B) and (F) of paragraph (1),~~
13 ~~the commission may base a finding on a certification by the~~
14 ~~commission that an applicant has filed, with the commission, a~~
15 ~~sworn declaration of ability to comply and intent to comply.~~

16 ~~(3) The commission may require, as a precondition to the~~
17 ~~issuance of a permit or certificate, the procurement of a~~
18 ~~performance bond sufficient to facilitate the collection of fines,~~
19 ~~penalties, and restitution related to enforcement actions that can~~
20 ~~be taken against the applicant.~~

21 ~~(b) In addition to the requirements in subdivision (a),~~
22 ~~charter-party carriers shall meet all other state and, where~~
23 ~~applicable, federal regulations as prescribed.~~

24 ~~(c) The commission may delegate to its executive director or~~
25 ~~that executive director's designee the authority to issue, renew, or~~
26 ~~authorize the transfer of, charter-party carrier permits or certificates~~
27 ~~and to make the findings specified in subdivision (a) that are~~
28 ~~necessary to that delegated authority.~~

29 ~~SEC. 5. Section 5376 of the Public Utilities Code is repealed.~~

30 ~~SEC. 3. Section 5374 of the Public Utilities Code is amended~~
31 ~~to read:~~

32 ~~5374. (a) (1) Before a permit or certificate is issued or~~
33 ~~renewed, the commission shall require the applicant to establish~~
34 ~~reasonable fitness and financial responsibility to initiate and~~
35 ~~conduct or continue to conduct the proposed or existing~~
36 ~~transportation services. The commission shall not issue or renew~~
37 ~~a permit or certificate pursuant to this chapter unless the applicant~~
38 ~~meets all of the following requirements:~~

39 ~~(A) It is financially and organizationally capable of conducting~~
40 ~~an operation that complies with the rules and regulations of the~~

1 Department of the California Highway Patrol governing highway
2 safety.

3 (B) It is committed to observing the hours of service regulations
4 of state and, where applicable, federal law, for all persons, whether
5 employees or subcarriers, operating vehicles in transportation for
6 compensation under the certificate.

7 (C) It has a preventive maintenance program in effect for its
8 vehicles used in transportation for compensation that conforms to
9 regulations of the Department of the California Highway Patrol
10 in Title 13 of the California Code of Regulations.

11 (D) It participates in a program to regularly check the driving
12 records of all persons, whether employees or subcarriers, operating
13 vehicles used in transportation for compensation.

14 (E) It has a safety education and training program in effect for
15 all employees or subcarriers operating vehicles used in
16 transportation for compensation.

17 (F) It will maintain its vehicles used in transportation for
18 compensation in a safe operating condition and in compliance with
19 the Vehicle Code and with regulations contained in Title 13 of the
20 California Code of Regulations relative to motor vehicle safety.

21 (G) It has filed with the commission the certificate of workers'
22 compensation insurance coverage or statement required by Section
23 5378.1.

24 (H) It has provided the commission an address of an office or
25 terminal where documents supporting the factual matters specified
26 in the showing required by this subdivision may be inspected by
27 the commission and the Department of the California Highway
28 Patrol.

29 (I) It provides for a mandatory controlled substance and alcohol
30 testing certification program as adopted by the commission
31 pursuant to Section 1032.1.

32 *(J) If the hired driver is utilizing a rented vehicle to provide*
33 *chauffeured transportation, the vehicle owner shall provide*
34 *insurance coverage and verify that the hired driver possess a valid*
35 *and appropriate license to operate a motor vehicle in the State of*
36 *California.*

37 (2) With respect to subparagraphs (B) and (F) of paragraph (1),
38 the commission may base a finding on a certification by the
39 commission that an applicant has filed, with the commission, a
40 sworn declaration of ability to comply and intent to comply.

1 (3) The commission may require, as a precondition to the
2 issuance of a permit or certificate, the procurement of a
3 performance bond sufficient to facilitate the collection of fines,
4 penalties, and restitution related to enforcement actions that can
5 be taken against the applicant.

6 (b) In addition to the requirements in subdivision (a),
7 charter-party carriers shall meet all other state and, where
8 applicable, federal regulations as prescribed.

9 (c) The commission may delegate to its executive director or
10 that executive director's designee the authority to issue, renew, or
11 authorize the transfer of, charter-party carrier permits or certificates
12 and to make the findings specified in subdivision (a) that are
13 necessary to that delegated authority.

14 ~~SEC. 6.~~

15 *SEC. 4.* Section 5378 of the Public Utilities Code is amended
16 to read:

17 5378. (a) The commission may cancel, revoke, or suspend any
18 operating permit or certificate issued pursuant to this chapter upon
19 any of the following grounds:

20 (1) The violation of any of the provisions of this chapter, or of
21 any operating permit or certificate issued thereunder.

22 (2) The violation of any order, decision, rule, regulation,
23 direction, demand, or requirement established by the commission
24 pursuant to this chapter.

25 (3) The conviction of the charter-party carrier of passengers of
26 any misdemeanor under this chapter while holding operating
27 authority issued by the commission or the conviction of the carrier
28 or its officers of a felony while holding operating authority issued
29 by the commission, limited to robbery, burglary, larceny, fraud,
30 or intentional dishonesty for personal gain.

31 (4) The rendition of a judgment against the charter-party carrier
32 of passengers for any penalty imposed under this chapter.

33 (5) The failure of a charter-party carrier of passengers to pay
34 any fee imposed upon the carrier within the time required by law.

35 (6) On request of the holder of the permit or certificate.

36 (7) Failure of a permit or certificate holder to operate and
37 perform reasonable service. That failure may include repeated
38 violations of the Vehicle Code or of regulations contained in Title
39 13 of the California Code of Regulations relative to motor vehicle
40 safety, by employees of the permitholder or certificate holder, that

1 support an inference of unsafe operation or willful neglect of the
2 public safety by the permitholder or certificate holder.

3 (8) Consistent failure of the charter-party carrier of passengers
4 to maintain its vehicles in a safe operating condition and in
5 compliance with the Vehicle Code and with regulations contained
6 in Title 13 of the California Code of Regulations relative to motor
7 vehicle safety, as shown by the records of the commission, the
8 Department of Motor Vehicles, the Department of the California
9 Highway Patrol, or the carrier.

10 (9) The knowing and willful filing of a false report that
11 understates revenues and fees.

12 (10) Failure of a permit or certificate holder, or of any of its
13 employees, to follow any order, decision, rule, regulation, direction,
14 demand, ordinance, or other requirement established by the
15 governing body of an airport, including solicitation practices.

16 (b) The commission may levy a civil penalty of up to seven
17 thousand five hundred dollars (\$7,500) upon the holder of an
18 operating permit or certificate issued pursuant to this chapter, for
19 any of the grounds specified in subdivision (a), as an alternative
20 to canceling, revoking, or suspending the permit or certificate. The
21 commission may also levy interest upon the civil penalty, which
22 shall be calculated as of the date on which the civil penalty is
23 unpaid and delinquent. The commission shall deposit at least
24 monthly all civil penalties and interest collected pursuant to this
25 section into the General Fund.

26 ~~SEC. 7. Section 5378.6 of the Public Utilities Code is amended~~
27 ~~to read:~~

28 ~~5378.6. (a) Upon receipt of a written recommendation from~~
29 ~~the Department of the California Highway Patrol that an application~~
30 ~~for a charter-party carrier certificate or permit be denied either (1)~~
31 ~~for failure to maintain any vehicle used in transportation for~~
32 ~~compensation in a safe operating condition or to comply with the~~
33 ~~Vehicle Code or with regulations contained in Title 13 of the~~
34 ~~California Code of Regulations relative to motor carrier safety or~~
35 ~~(2) for failure to enroll all drivers in the pull notice system as~~
36 ~~required by Section 1808.1 of the Vehicle Code, the commission~~
37 ~~shall deny the application. The department's written~~
38 ~~recommendation shall specifically indicate compliance with~~
39 ~~subdivision (b).~~

1 ~~(b) Before transmitting a recommendation pursuant to~~
2 ~~subdivision (a) to the commission, the Department of the California~~
3 ~~Highway Patrol shall notify the applicant for the charter-party~~
4 ~~carrier certificate or permit of all of the following in writing:~~

5 ~~(1) That the department has determined that the applicant's~~
6 ~~safety record is unsatisfactory, furnishing a copy of any~~
7 ~~documentation or summary of any other evidence supporting the~~
8 ~~determination.~~

9 ~~(2) That the determination may result in a denial of the~~
10 ~~applicant's certificate or permit by the commission.~~

11 ~~(3) That the applicant may request a review of the determination~~
12 ~~by the department within five days of its receipt of the notice~~
13 ~~required under this subdivision. The department shall, upon request,~~
14 ~~conduct and evaluate that review prior to transmitting any~~
15 ~~notification to the commission pursuant to subdivision (a).~~

16 ~~(c) Any applicant for a charter-party carrier certificate or permit~~
17 ~~denied pursuant to subdivision (a) that wishes to obtain a certificate~~
18 ~~or permit shall reapply for the desired authority.~~

19 ~~SEC. 8. Section 5379 of the Public Utilities Code is amended~~
20 ~~to read:~~

21 ~~5379. After the cancellation or revocation of a permit or~~
22 ~~certificate, or during the period of its suspension, it is unlawful for~~
23 ~~a charter-party carrier of passengers to conduct any operations as~~
24 ~~a carrier. The commission may either grant or deny an application~~
25 ~~for a new permit or certificate whenever it appears that a prior~~
26 ~~permit or certificate of the applicant has been canceled or revoked~~
27 ~~pursuant to Section 5378 or whenever it appears, after hearing,~~
28 ~~that as a prior permit or certificate holder, the applicant engaged~~
29 ~~in any of the unlawful activities set forth in Section 5378 for which~~
30 ~~his or her permit or certificate might have been canceled or~~
31 ~~revoked.~~

32 ~~SEC. 9.~~

33 ~~SEC. 5. Section 5411.5 of the Public Utilities Code is amended~~
34 ~~to read:~~

35 ~~5411.5. (a) Whenever a peace officer, as defined in Chapter~~
36 ~~4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal~~
37 ~~Code, arrests a person for operation of a charter-party carrier of~~
38 ~~passengers without a valid certificate or permit, the peace officer~~
39 ~~may impound and retain possession of the vehicle.~~

1 (b) Whenever a peace officer, as defined in Chapter 4.5
2 (commencing with Section 830) of Title 3 of Part 2 of the Penal
3 Code, arrests a person for operating a charter-party carrier of
4 passengers as a taxicab in violation of an ordinance or resolution
5 of a city, county, or city and county, the peace officer may impound
6 and retain possession of the vehicle.

7 (c) If the vehicle is seized from a person who is not the owner
8 of the vehicle, the impounding authority shall immediately give
9 notice to the owner by first-class mail.

10 (d) The vehicle shall immediately be returned to the owner if
11 the infraction or violation is not prosecuted or is dismissed, the
12 owner is found not guilty of the offense, or it is determined that
13 the vehicle was used in violation of Section 5411 without the
14 knowledge and consent of the owner. The vehicle shall be returned
15 to the owner upon payment of any fine ordered by the court. If the
16 vehicle is seized due to a violation of a person other than the owner
17 of the vehicle, the vehicle shall be returned to the owner after all
18 impoundment fees are paid. After the expiration of six weeks from
19 the final disposition of the criminal case, unless the owner is in
20 the process of making payments to the court, the impounding
21 authority may deal with the vehicle as lost or abandoned property
22 under Section 1411 of the Penal Code.

23 (e) At any time, a person may make a motion in superior court
24 for the immediate return of the vehicle on the ground that there
25 was no probable cause to seize it or that there is some other good
26 cause, as determined by the court, for the return of the vehicle. A
27 proceeding under this section is a limited civil case.

28 (f) No peace officer, however, may impound any vehicle owned
29 or operated by a nonprofit organization exempt from taxation
30 pursuant to Section 501(c)(3) of the Internal Revenue Code which
31 serves youth or senior citizens and provides transportation
32 incidental to its programs or services.